

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of

Compatibility Between Cable
and Consumer Electronics Equipment

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PP Docket No. 00-67

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**PETITION FOR RECONSIDERATION
OF
TIME WARNER CABLE**

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PETITION FOR RECONSIDERATION

Time Warner Cable ("Time Warner"), by its attorneys, files this Petition for Reconsideration pursuant to Section 1.429(d) of the Commission's rules to address critical deficiencies raised by the Commission's recent *Report and Order* in the above-captioned proceeding. Time Warner operates cable television systems in numerous communities across the nation and thus has a vital interest in ensuring that digital consumer electronics ("CE") devices support all services offered by Time Warner's systems and that appropriate labels exist to distinguish between those TV receiving devices that are compatible with its systems and those that are not.

I. INTRODUCTION

The Commission's recent decision in the above-captioned proceeding sought to resolve several issues relating to the compatibility between cable systems and digital CE equipment, including labeling requirements and whether all DTV receivers must have a 1394 connector.¹ The Commission ultimately concluded that not all digital CE devices must include a 1394

¹See *In the Matter of Compatibility of Cable Systems and Consumer Electronics Equipment*, Report and Order, PP Docket No. 00-67, FCC 00-342 (rel. September 15, 2000) ("*Report and Order*").

connector and defined labeling requirements for three categories of digital CE devices.² As explained below, the labeling scheme adopted by the Commission is likely to add to consumer confusion, and thus should be modified on reconsideration.

II. THE COMMISSION’S LABELS DO NOT ACHIEVE THEIR INTENDED PURPOSE.

The Commission’s recently adopted labels do not achieve their intended purpose. The Commission originally “framed the labeling issue as ‘how to best indicate to consumers the capability of television receivers to operate with cable television systems’ . . . believ[ing] that avoiding consumer confusion is an important goal.”³ Time Warner has consistently stressed the importance of developing a labeling system that is simple to understand, consumer friendly and not misleading.⁴

The Commission’s goal in this proceeding was to adopt labels that “permit consumers to make well-informed decisions about DTV equipment purchases based on a clear understanding of the capabilities of receivers with different labels.”⁵ Unfortunately, the labels actually adopted in this proceeding fall short of this worthy objective and in fact raise serious concerns about potential consumer confusion and frustration. They fail to explain in plain English the compatibility features and drawbacks offered by a particular digital TV set. More important, the Commission’s labels fail to identify whether the consumer can gain access to all multichannel

²*See id.* at ¶¶ 13, 24-26.

³*See id.* at ¶ 29.

⁴*See* Comments of Time Warner Cable in PP Docket No. 00-67 (May 24, 2000) at 15-19 (“Time Warner Digital Compatibility Comments”).

⁵*See Report and Order* at ¶ 13.

video programming distributors' ("MVPD") services using a particular CE device. The Commission therefore should refine its labeling requirements to accurately reflect the functionality of CE devices that qualify for a particular label.

The "Digital Cable Ready 1" label is particularly misleading because those devices are not in fact fully cable-ready. To qualify for a label incorporating the term "cable ready," a CE device must fully support all services offered by a cable system. Devices bearing the "Digital Cable Ready 1" label will not support all interactive or two-way services and therefore are not "cable ready."⁶ Unfortunately, this point will be lost on average consumers who do not know specifically what features a digital television receiver must have to enable them to obtain particular services from their cable operator. The Commission should therefore abandon the use of the "Digital Cable Ready 1" label, and rather adopt nomenclature that clearly signals to the consumer that such devices will not support all services offered by a cable system. In particular, any devices falling in this category should not use the term "cable ready" in their label.

More generally, the Commission should avoid the use of "cable ready" to identify any device which is not in fact capable of receipt of all services available from the cable operator. It only needs to look at the consumer confusion that resulted in the analog context to understand

⁶For example, at paragraph 15 of the *Report and Order*, the Commission asserts that "copy protection capability will be one of the characteristics of a receiver that is labeled 'cable ready.'" However, because devices bearing the "Digital Cable Ready 1" label lack a 1394 or similar bi-directional, broadband interface, copy protected material could not pass from the set-top box to the display. Thus, by the Commission's own reasoning, such devices should not be awarded the "cable ready" label.

why improper usage of that term will inevitably invite consumer confusion in the digital context.⁷

As Commissioner Barrett has previously explained,

It must be remembered that the consumer electronics equipment compatibility section of the Cable Television Consumer Protection and Competition Act of 1992 [] was adopted as a result of consumer confusion and misunderstanding about the technical capabilities of their electronic equipment vis-a-vis their cable systems. Equipment that was called or implied to be "cable ready" or "cable compatible" often led to the "uneducated" consumer to believe that he/she would not need a converter or set top box to receive certain cable services. While consumers may have been able to tune certain cable channels, they were often unable to receive any scrambled programming services. In the end, cable operators were faced with unhappy and frustrated subscribers, who had paid large sums of money for electronic equipment that they believed would not require any additional equipment to receive cable service.⁸

Given the susceptibility to confusion from the term "cable ready," the Commission should avoid labels that include these words altogether, or at minimum, only those devices that themselves are capable of supporting all services offered by a cable operator should bear a label that includes the term "cable ready."⁹ Since digital TV receivers under the Commission's present "Digital Cable

⁷See Comments of the National Cable Television Association in PP Docket No. 00-67 (May 24, 2000) at 4 ("NCTA Digital Compatibility Comments").

⁸See *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronic Equipment*, Memorandum Opinion and Order in ET Docket No. 93-7, 11 FCC Rcd 4121 (1996) (dissent of Commissioner Andrew C. Barrett).

⁹Even devices qualifying for the label "Digital Cable Ready 2" are not truly "cable ready" because they require connection to a set-top box to be fully capable of taking advantage of present and future services offered by cable operators. Time Warner suggests that the Commission reconsider using the label previously set forth by the National Cable Television Association -- "Digital TV - Cable Interactive." See NCTA Digital Compatibility Comments at 13. If the Commission insists upon the use of "cable ready" in the label for this category, the label should be revised or a disclaimer added to signal to consumers that they will need a set-top box to

Ready 1" category do not and cannot support all services offered by cable operators, it is imperative that the Commission fashion a new label that more accurately describes such devices.¹⁰

III. THE "DIGITAL CABLE READY 3" LABEL REMAINS INAPPROPRIATE CONSIDERING SPECIFICATIONS FOR SUCH DEVICES HAVE NOT BEEN DEVELOPED.

The Commission should repeal its "Digital Cable Ready 3" category because the specifications for these next generation devices have not yet been developed. The Commission established "Digital Cable Ready 3" criteria in anticipation of the cable and consumer electronics industries' development of integrated digital TV receivers that include features normally found in a set-top box.¹¹ This label remains entirely inappropriate because it essentially forces the industries to develop such devices to fit the label. Innovation and consumer demand should fuel the development of a bi-directional, integrated digital TV receiver, not Commission labeling requirements.

The current "Digital Cable Ready 3" label is very limiting. It remains critically important that integrated digital TV sets remain capable of delivering all the services and functionalities subscribers could obtain through a cable operator supplied digital set-top box. If integrated

take full advantage of cable systems' offerings.

¹⁰At a very minimum, if the Commission insists on the use of "cable ready" in the label for this category, the label should be revised so that consumers will readily appreciate the limited functionality of this equipment. Possible revised labels such as "Digital Cable Ready One-Way," "Digital Basic Cable Ready," or "Digital Cable Ready - Standard" might be considered. The Commission should also reconsider including a disclaimer to warn consumers of the limited functionality of devices within this category. Time Warner suggests use of the disclaimer previously set forth by the National Cable Television Association. *See* NCTA Digital Compatibility Comments at 13.

¹¹*See Report and Order* at ¶ 26, 28.

digital TV sets lack sufficient memory and upgradeability to allow cable operators to download new applications, consumers might soon find that their expensive new sets are obsolete. Through the ongoing “middleware” development process, however, the cable industry is working hard to ensure that such planned obsolescence will not occur.¹²

Devices that do not include such “middleware” may be able to offer access to some, but not all, services offered by a cable system, necessitating connection to some sort of digital device or set-top box. Absent the inclusion of a 1394 or comparable bi-directional, broadband interface connector,¹³ such connectivity would not be possible and consumers would not be able to take advantage of the full range of present and future applications their cable operators will offer, including copy protected programming.¹⁴ As higher-end products, all integrated digital TV sets

¹²See Karen J. Bannan, *Middleware Will Spawn Services; Set-Top Boxes for Cable Television Providers*, MULTICHANNEL NEWS (June 5, 2000) at 1B (highlighting the benefits of “middleware”). The CE industry has argued that the need for greater expediency in developing such “middleware” requires Commission intervention. See e.g., *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Response of the Consumer Electronics Retailers Coalition to the July 7, 2000 Cable Industry Status Report, CS Docket No. 97-80 (August 2, 2000) at 6-7. While the benefits “middleware” will reap provide tremendous incentive to its development, no federal requirement mandates it. See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Status Report (July 7, 2000) at 9-11. Time Warner, however, fully supports CableLabs’ efforts in developing such “middleware” as expeditiously as possible.

¹³The Commission’s decision contemplates that interface connectors other than 1394 may become available. See *Report and Order* at ¶ 20 (“[T]he 1394 connector is by no means the only digital connector that is, or will become available We recognize that, at some point, technological developments may lead to an environment in which, for at least some consumers, another digital connector would be used in place of the 1394 connector.”).

¹⁴The Commission has previously recognized this point. The *Report and Order* states “[t]o the extent that cable operators are continually developing new services, and to the extent that some of those services may require capabilities not available in earlier models of DTV receiver, one can imagine a subscriber wanting a 1394 connector as an ‘insurance policy.’ Rather

therefore should include a 1394 or comparable interface connector to ensure flexibility to receive the full complement of cable systems' services and guard against obsolescence.

In short, it is evident that the "Digital Cable Ready 3" label is premature -- a name in search of a device that does not exist. FCC adoption of this label will only add to consumer confusion until devices meeting these criteria are in fact available for purchase. As the industries continue to work together to develop the specifications for an integrated digital TV receiver, they must remain free to develop such devices free from Commission influence the "Digital Cable Ready 3" label will inevitably have. Otherwise, the Commission would end up with a myriad of label categories to distinguish among various digital CE devices, further compounding the likelihood of consumer confusion. The Commission should therefore repeal this definition and defer creating a label until such time that the cable and CE industries have developed the specifications for integrated digital TV receivers.

IV. THE COMMISSION'S DECISION FAILS TO CONSIDER THE NEED FOR CONSUMER EDUCATION AT THE POINT OF PURCHASE.

The *Report and Order*, focusing solely on the details and particulars of the labeling standards, failed to address the need for consumer education at the point of purchase. While Time Warner believes that the labels themselves require further refinement, the descriptions accompanying those labels provide a good basis for helping consumers identify what a particular

than replacing his or her DTV receiver in order to upgrade the capability to access advanced services, the subscriber might prefer to purchase an upgraded set-top box and connect it to the DTV using a 1394 connector." *Report and Order* at ¶ 18.

device offers.¹⁵ With improved labeling and aggressive point of purchase consumer education efforts, consumer confusion and frustration can be minimized.

Common sense dictates that if these rules are to successfully protect consumers, consumers must not only be given a clear understanding of the capabilities of any digital television receivers or devices they purchase, they must have ready access to this information prior to the time of their purchases. When a consumer is making his/her decision to purchase, relevant information should not be hidden on the bottom or back of devices,¹⁶ or buried in owners' manuals that are not available until the devices are taken home and unpacked. No consumer should ever be misled about the capabilities and limitations of a particular device. Ideally, there should be clear, concise point of purchase displays in plain, nontechnical language explaining what features each device does and does not offer.

The Commission should now make a strong statement for conspicuousness by explicitly and unambiguously requiring the presentation of all information relevant to the capability of any digital television receiver or device at the point of purchase prior to the time of purchase. In addition to requiring that appropriate labels conspicuously appear on the outside of all packaging of any digital CE device, manufacturers and retailers should have an affirmative duty to supply

¹⁵Time Warner, however, would suggest that the labels should also reflect whether a particular device can support individual services offered by cable operators, *e.g.*, electronic programming guides, video-on-demand, remote-controlled impulse pay-per-view.

¹⁶The Commission's current rules do not require anything more than conformity of labels to the requirements of Sections 2.925(d) and (e) of its rules. Absent circumstances requiring an alternative method, the "label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase," *i.e.*, "visible from the outside of the equipment enclosure." *See* 47 C.F.R. §§ 2.925(d); 2.925(d)(2); 2.925(e). In practice, it appears that such labels typically are affixed to the back or base of the cabinet of the equipment itself and not on the device's packaging.

consumers with specific details for each product, and this information should be readily available on the showroom floor and/or on the floor sample itself.¹⁷ Under Section 624A(c)(2)(A) of the Act, the Commission has clear jurisdiction to impose such obligations on the CE industry so that consumers will not be misled.¹⁸ Similarly, consumers should have an unrestricted right to a full money-back return policy within 30 days if they are not satisfied with the ability of any device labeled as “cable ready” to operate with the services offered by the local franchised cable operator. Such requirements will serve to ensure that consumers are not misled because they will have the necessary information to make informed purchasing decisions.

¹⁷For example, the Commission should require retailers to prominently display on the showroom floor a chart similar to that included in the *Report and Order*. See *Report and Order* at Appendix D.

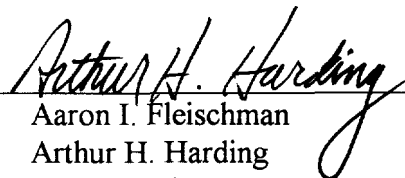
¹⁸See 47 U.S.C. § 544A(c)(2)(A).

V. CONCLUSION

The Commission's *Report and Order* fails to achieve its intended goal of developing a set of clear and concise labels for digital CE devices that will help consumers make informed purchasing decisions. Instead, the Commission-adopted labels will foster greater consumer confusion, having the unintended effect of slowing the transition to digital television. Time Warner respectfully requests that the Commission revisit its decision in favor of more consumer friendly labels that offer more detailed explanations in plain English of the functionalities that individual devices will support.

Respectfully submitted,

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